IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Crl.Rev.Pet.No. 956 of 1999()

CRA. 343/1997 OF IST ADDL.SESSIONS COURT, THRISSUR
C.C. 152/199R OF JUDL. MAGISTRATE OF IST CLASS COURT, CHAVAKKAD.

REVN. PETITIONER: APPELLANT / ACCUSED

SHAJU KUMAR, SON OF KANNATH
VEETTIL AYYAPPAN, PATTUMURI,
KARIKKAD, KADAVALLUR VILLAGE.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENT: RESPONDENT/ COMPLAINANT

STATE OF KERALA, REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

tss

CRL.RP. NO.956/1999

ORDER ON CRL.MP. 4424/1999 IN CRL.RP. NO.956/1999

DISMISSED

11.09.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

tss

K.R. UDAYABHANU, J.

Crl. R.P. No.956 of 1999

Dated 19th June, 2007

ORDER

The revision petitioner stands convicted for the offence under sections 279 and 304-A IPC and sentenced as modified by the appellate court to undergo simple imprisonment for three months for the offence under section 279 IPC and simple imprisonment for 6 months for the offence under section 304-A IPC.

2. The prosecution case is that on 16-1-1996 at 5.30 a.m., the accused drove the bus bearing Regn.No.K.L.8.100 through Guruvayoor - Thrissur road from west to east, in a rash and negligent manner and hit a mahout. The injured died on the spot. The evidence adduced in the matter consisted of the testimony of the testimony of PWs 1 to 7 and Exts.P1 to P7. PWs 1 and 4 are the other mahouts who were walking behind the elephant when the incident took place. The elephant also sustained injuries. PW-3, the AMVI has proved Ext.P3 report wherein he has mentioned

that it was found on examination that the vehicle had no mechanical defects. I find that the fact that the deceased and PWs 1 and 4 were pedestrians and the vehicle hit them from the back goes a long way in establishing that the incident took place on account of the negligence on the part of the accused. Of course, the appellate court has discarded Ext.P6 trip sheet as the same was not taken into custody in a proper manner and the person who produced the same was not examined. I find that PW-1 who entrusted the FIS has testified that he identified the accused at the spot itself. I find that although PW-4 turned hostile, the evidence of PW-1 stands unimpeached. Nothing contradictory to the previous statement has been brought out in the cross examination.

3. In the circumstances, I find that the concurrent findings of the courts below with respect to the guilt of the accused do not call for interference. The conviction is confirmed. So far as the sentence is concerned, the counsel pleaded for leniency pointing out that more than

10 years have elapsed since the date of incident and that the accused has been facing criminal proceedings so long. It is also pointed out that the accused was then aged 24 only. The counsel has sought for invoking the provisions of Probation of Offenders Act. I find that this is not a fit case to invoke the provisions of the Probation of Offenders Act. The death was resulted on account of the negligence of the accused. In the circumstances of the case, the sentence imposed under section 304-A IPC is modified to imprisonment till the rising of the court and to pay a compensation of Rs.25,000/- to the L.Rs of the deceased Ravindran Nair and in default to undergo simple imprisonment for 6 months. The revision petitioner is granted 2 months time from today onwards to pay the amount of compensation. He shall appear before the JFCM, Chavakkad on 24-8-2007 to receive the sentence.

The Crl.R P is disposed of accordingly.

Kvm/- K.R.UDAYABHANU, JUDGE.

K.R.UDAYABHANU, J.

CRL.R.P.956 OF 1999

ORDER

19-6-2007.